

ORDERED.

Dated: July 26, 2019



Michael G. Williamson  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

Chapter 11

TIME DEFINITE SERVICES, INC.,

Case No.: 8:19-bk-06564-MGW

Debtor.

*Jointly Administered with:*

TIME DEFINITE LEASING, LLC

Case No.: 8:19-bk-06565-MGW

Debtor.

**INTERIM ORDER GRANTING DEBTORS' MOTION TO USE CASH COLLATERAL  
OF JPMORGAN CHASE BANK, N.A. NUNC PRO TUNC TO THE PETITION DATE**

**[Continued Hearing: August 21, 2019 at 9:30 a.m.]**

THIS CASE came before the Court on July 24, 2019 at 10:30 am, in Tampa, Florida upon Debtor in Possession Time Definite Services, Inc. ("Time Definite"), and affiliated Debtor in Possession Time Definite Leasing, LLC's ("Time Leasing") (collectively, the "Debtors") *Emergency Motion for Authority to Use Cash Collateral* [Doc. No. 6] (the "Motion"). Adequate

notice of the hearing was given under the circumstances. The Court has reviewed the record and has heard the argument of counsel, and has been advised that the Debtors and JPMorgan Chase Bank, N.A. (“JPMorgan”) have agreed to the relief as described herein, for the period through August 21, 2019. Accordingly, it is

**ORDERED** as follows:

1. The Motion is **GRANTED** to the extent set forth herein.
2. The Debtors and JPMorgan are parties to certain loan transactions, including, but not limited to, the Credit Agreement, dated as of June 10, 2016, as amended, supplemented, or modified (the “Line of Credit”).
3. The Debtors acknowledge that as of the Petition Date, the Debtors, along with other non-Debtor co-borrowers, were parties to that certain Line of Credit. The Debtors acknowledge that amounts due under the Line of Credit as of July 11, 2019, are at least \$4,694,920.26, consisting of:

Principal	\$ <u>4,687,655.00</u>
Interest	\$ <u>7,265.26</u>
Total	\$ <u>4,694,920.26</u>
Per diem	\$ <u>668.35</u> <sup>1</sup>

4. The Debtors acknowledge that Debtors’ obligations to JPMorgan pursuant to the Line of Credit are secured by first-priority liens on substantially all of Debtors’ assets,<sup>2</sup> as described in the applicable loan documents, including accounts, general intangibles, and equipment, and including all of the Debtors’ rights, title, and interests in all books, records, and data relating thereto (the “Pre-Petition Collateral”). As of the Petition Date, the Debtors

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<sup>1</sup> A portion of the balance is on a LIBOR contract that matures on July 29, 2019, and the per diem may change accordingly at that time.

<sup>2</sup> Except for valid and properly perfected purchase money security interests on certain specific individual tractors and trailers.

acknowledge that all cash and cash equivalents of the Debtors were part of JPMorgan's Pre-Petition Collateral or proceeds of such Pre-Petition Collateral. Accordingly, for purposes of this Order, the Debtors acknowledge that JPMorgan's Cash Collateral shall include, without limitation, any and all (i) cash or cash equivalents on hand (whether under the control of the Debtors or any third party) and cash collections of the Debtors, as of the Petition Date, (ii) cash proceeds arising from the collection, sale, lease or other disposition, use or conversion of any of the Pre-Petition Collateral collected on or after the Petition Date as provided in § 552(b), and (iii) any other property of the Debtors that constitutes Cash Collateral, as provided in sections 363(a) and 363(c) of the Bankruptcy Code. The Debtors are hereby authorized to use the Cash Collateral of JPMorgan in the manner provided in this Order, on an interim basis until August 21, 2019.

5. As of the Petition Date, Debtors represent that they had at least the amount of \$258,962 on deposit with banks, accounts receivable totaling \$3,933,706.94, of which \$3,592,930.94 was less than 90 days old and substantially all of which Debtors believes would be collectible, and Debtors assert that the additional amount of \$491,197.11 is due arising from deliveries and services completed through July 12, 2019 but which had not yet been invoiced as of the Petition Date (the "Uninvoiced Amount"). JPMorgan accepts Debtors' representation of the Uninvoiced Amount for purposes of this order, provided that JPMorgan may, upon notice and filing an appropriate motion and affidavit, seek to have the Uninvoiced Amount revised for purposes of this order upon a proper showing.

6. Debtors have provided a 16 week cash flow forecast to JPMorgan ("Cash Flow Report").

7. The Debtors are hereby permitted to use Cash Collateral, as defined in 11 U.S.C. § 363(a), including the cash or noncash proceeds of assets that were not Cash Collateral on the Petition Date up to the amounts shown in the Budget attached hereto as Exhibit A.

8. As a condition of permitting the Debtors to use Cash Collateral as provided herein, the Debtors will operate strictly in accordance with the Budget, and may spend Cash Collateral, not to exceed ten percent (10%) above the amount shown for each line item, and not to exceed in the aggregate, ten percent (10%) of the total amount of expenses budgeted each week, and on a cumulative basis not to exceed 10% of the agreed budget amount for both the trailing 30 day period and on a cumulative basis since the Petition Date. On Wednesday of each week, beginning on July 31, 2019, Debtors shall provide JPMorgan with (i) weekly reports on which reflect its actual receipts and expenditures for the prior week, and the percentage variance per line item to the Budget, (ii) an updated rolling Cash Flow Report, and (iii) a weekly receivables aging report which lists and evidences receivable aging, receivables collected, and new receivables created during the preceding week. Nothing in this Order shall authorize the disposition of any Pre-Petition Collateral outside the ordinary course of business or the Debtors' use of the Cash Collateral resulting therefrom without the prior written consent of JPMorgan. The authorization to use Cash Collateral will expire on August 21, 2019 at 5:00 p.m.

9. As adequate protection for the use of Cash Collateral and for any diminution in value of JPMorgan's Prepetition Cash Collateral, JPMorgan is hereby granted a valid, continuing, and perfected post-petition lien upon, and security interest in, to the extent and in the order of priority of any valid prepetition lien held by JPMorgan, all of the property, assets, or interests in property or assets of each Debtor and each Debtors' estate, now existing or hereafter acquired or created, including, but not limited to, all property identified in the definition of cash collateral in

11 U.S.C. 363(a) generated by Debtors post-petition, and all proceeds generated thereof. JPMorgan's liens against Debtors' Cash Collateral (both pre and post-petition) shall extend to any account holding such Cash Collateral, regardless of whether JPMorgan has control over such account, and encumbers any Cash Collateral held in debtor-in-possession accounts required by applicable law, or otherwise. Additionally, JPMorgan shall be entitled to an administrative expense claim pursuant to 11 USC 507(b) to the extent the adequate protection granted by this Order proves insufficient and/or does not offset any diminution of value in the Pre-Petition Cash Collateral.

10. As further adequate protection, Debtors shall not allow the aggregate amount of Cash Collateral to decline below the levels of cash on deposit with banks, plus accounts receivable, plus amounts earned by delivery but not yet invoiced, that constituted JPMorgan Cash Collateral as of the Petition Date.

12. Upon reasonable notice, and provided that it doesn't unreasonably interfere with the business of the Debtors, Debtors shall grant to JPMorgan access to Debtors' business records and premises for inspection within three business days from the date of notice.

13. Debtors shall maintain insurance coverage for their property in accordance with their obligations under the loan and security documents with JPMorgan and shall provide proof of insurance upon written request.

14. The Court will hold a further preliminary hearing on the Motion and case status conference on **August 21, 2019 at 9:30 a.m.**, at Courtroom 8A, 801 N. Florida Avenue, Tampa, Florida 33602. The Debtors shall provide an updated Cash Flow Report and an updated budget to JPMorgan no later than three (3) days prior to the date of the continued hearing.

15. Unless waived by the Lender in writing, the Debtors shall immediately cease using Cash Collateral upon the occurrence of one of the following events (an “Event of Default”):

- a. If a trustee is appointed in this Chapter 11 Case;
- b. If the Debtors breach any term or condition of the Line of Credit loan documents, other than defaults that existed as of the Petition Date; and failure to make scheduled payments coming due under the loan document after the Petition Date;
- c. If an order converting the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code is entered;
- d. If an order dismissing the Chapter 11 Case is entered; or
- e. If any violation or breach of any provision of this Order occurs.

16. Upon the occurrence of an Event of Default, JPMorgan shall file a Notice of Default with the Court and provide telephonic notice to the Debtors’ attorney, Buddy Ford, at (813) 877-4669. The Debtors shall immediately cease using any Cash Collateral upon receipt of telephonic notice that an Event of Default has occurred. The Debtors shall then have 72 hours to file an affidavit contesting the alleged default, upon which the parties shall be entitled to an expedited hearing regarding the Notice of Default. At the expedited hearing regarding the Notice of Default, JPMorgan may seek relief, including, without limitation, the following:

- a. The lifting of the automatic stay under 11 U.S.C. §362 and permitting JPMorgan to take possession of all or a part of the Prepetition Collateral and Property;
- b. The abandonment and immediate delivery to JPMorgan of all or any part of the Prepetition Collateral and Property, which JPMorgan shall be permitted to sell in accordance with applicable law, either piecemeal or as a going concern;
- c. The entry of an order prohibiting or limiting the further use of Cash Collateral;
- d. The appointment of a trustee in either chapter 11 proceeding or the entry of an order converting the case to chapter 7; and/or

- e. Such further or other relief as provided in JPMorgan's loan documents, the Bankruptcy Code, or applicable non-bankruptcy law, including, without limitation, accelerating all indebtedness.

If the Debtors do not timely file an affidavit in opposition to a properly-filed Notice of Default, the relief granted the Debtors under this Order, including but limited to the Debtors' authority to use the Cash Collateral, shall be automatically terminated. Further, absent a hearing and Court order to the contrary, the automatic stay, as it pertains to JPMorgan, shall automatically be terminated fourteen (14) days after the filing of the Notice of Default, and JPMorgan shall be permitted to exercise all rights and remedies without the need to separately seek relief from stay.

18. Payment by the Debtors of expenses other than those set forth in the submitted Budget attached hereto shall constitute cause to terminate the automatic stay in accordance with the provisions of this Order unless JPMorgan consents to those changes in writing. In consenting to a Budget item in the future or by taking any other actions pursuant to this Order, JPMorgan shall not have any liability to any third party and shall not be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" with respect to the operation or management of the Debtors.

19. This Order shall be binding on a subsequently appointed Chapter 11 or Chapter 7 Trustee in bankruptcy.

20. JPMorgan shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any Pre-Petition Collateral, Cash Collateral, or otherwise.

21. The liens and security interest granted to JPMorgan pursuant to this Order shall be valid and perfected post-petition without the need for execution or filing of any further documents or instruments otherwise required to be filed or be executed or filed under non-bankruptcy law.

22. Debtors' attorney shall forthwith serve a copy of this Order and the Motion on all parties and counsel entitled to notice pursuant to Rule 4001(b) of the Federal Rules of Bankruptcy

Procedure.

23. The Debtors have stipulated and the Court has approved, that JPMorgan has a perfected, non-avoidable first priority lien on and in the Pre-Petition Collateral and all proceeds related thereto. Any interested party must file an adversary proceeding challenging such validity, enforceability, and perfection no later than 90 days following the Petition Date or forever be barred. If a Creditor's Committee or Ch. 11 Trustee is appointed in this case, then such party shall have 60 days from the date of such appointment to file an adversary proceeding challenging such validity, enforceability, and perfection or forever be barred from raising such a challenge.

24. Nothing herein shall limit or prejudice JPMorgan from seeking such other or further relief or right available in law, under the Code or otherwise, including the right to seek additional adequate protection or assert additional claims, and does not limit or impair any other rights that JPMorgan may have.

*Debtors' attorney, Buddy Ford, Esq. is directed to serve a conformed copy of this Order on all appropriate parties and to file a certificate of service.*



	A	B	C	F	AB	AC	AD	AE	AF	AG	AH
1			<b>Week Commencing:</b>		1	2	3	4	5	6	7
2			Cash Operating Budget		7/20/2019	7/27/2019	8/3/2019	8/10/2019	8/17/2019	8/24/2019	8/31/2019
3					7/26/2019	8/2/2019	8/9/2019	8/16/2019	8/23/2019	8/30/2019	9/6/2019
4											
5			Anticipated Billing								
6			Shipped Order Revenue		\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00	\$ 700,000.00
7			Abbott			\$ 125,000.00					
8			Warehousing			\$ 40,000.00				\$ 40,000.00	
9											
10			Beginning Bank Balance		\$ 256,792.60	\$ 260,591.60	\$ 391,461.15	\$ 429,258.15	\$ 593,379.38	\$ 606,174.38	\$ 738,968.38
11			Beginning Accounts Receivable		\$ 4,617,546.71	\$ 4,542,546.71	\$ 4,467,546.71	\$ 4,277,546.71	\$ 4,152,546.71	\$ 4,027,546.71	\$ 3,952,546.71
12			<b>Cash In-Flows</b>								
13			Anticipated AR Collections		\$ 775,000.00	\$ 775,000.00	\$ 890,000.00	\$ 825,000.00	\$ 825,000.00	\$ 775,000.00	\$ 865,000.00
14											
15			Beginning Ba								
16			<b>Total Sources of Cash</b>		\$ 775,000.00	\$ 775,000.00	\$ 890,000.00	\$ 825,000.00	\$ 825,000.00	\$ 775,000.00	\$ 865,000.00
17											
18			<b>Cash Disbursements - Payroll Related</b>								
19			Payroll		\$ 130,000.00		\$ 130,000.00		\$ 130,000.00		\$ 130,000.00
20			Health Insurance - BCBS			\$ 20,126.93					\$ 20,126.93
21			Health Insurance - Principal			\$ 2,864.08					\$ 2,864.08
22			<b>Total Payroll Related</b>		\$ 130,000.00		\$ 130,000.00		\$ 130,000.00		\$ 152,991.01
23											
24			<b>Cash Disbursements - Other</b>								
25			<b>ACHs</b>		1	2	3	4	5	6	7
26			Driver Settlement		\$ 50,000.00	\$ 110,000.00	\$ 50,000.00	\$ 110,000.00	\$ 50,000.00	\$ 110,000.00	\$ 50,000.00
27			EFS		\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00	\$ 85,000.00
28			Freight Payable - ACH		\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
29			Quick Pay - ACH								
30			Office Payables Misc								
31			TA		\$ 2,200.00	\$ 2,200.00	\$ 2,200.00	\$ 2,200.00	\$ 2,200.00	\$ 2,200.00	\$ 2,200.00
32			Transflo								
33			Commissions		\$ 9,000.00			\$ 10,000.00			
34			Federal Highway Tax							\$ 75,000.00	
35			Insurance deposits								
36											
37			<b>Checks</b>								
38			Freight Payable - Checks batches		\$ 350,000.00	\$ 225,000.00	\$ 400,000.00	\$ 225,000.00	\$ 400,000.00	\$ 225,000.00	\$ 400,000.00
39			Freight Payable - On demand								
40			Office Payables - Checks		\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00	\$ 35,000.00
41			Quick Pay Checks								
42			Insurance: Farris Evans					\$ 83,312.50			
43			Rent: Randall Point								
44											
45			<b>Auto Debits</b>								
46			Pilot		\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00	\$ 40,000.00
47			Loves		\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00	\$ 60,000.00
48			North American Transaction								
49			Insurance: 1st Insur (TIA)			\$ 69,368.45					
50			Sumterville Rent (TDSTLLC)			\$ 1,800.00					\$ 1,800.00
51			Visa				\$ 40,000.00				\$ 40,000.00
52			Empist/Avataria			\$ 5,760.00					\$ 6,500.00
53			PLM Trailer Rentals 1								

EXHIBIT

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